

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddflaw.com
abacon@toddflaw.com
mgeorge@toddflaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JANETTE INIGUEZ, individually and) on behalf of all others similarly situated,)) Plaintiff,))) vs.))) UBER TECHNOLOGIES, INC. and) DOES 1-10,)) Defendant(s).))))	Case No. <u>CLASS ACTION</u> COMPLAINT FOR VIOLATIONS OF: 1. VIOLATIONS OF ELECTRONIC FUNDS TRANSFER ACT [15 U.S.C. §1693 ET SEQ.] 2. COMMON LAW CONVERSION <u>DEMAND FOR JURY TRIAL</u>
--	--

Plaintiff JANETTE INIGUEZ (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following against Defendant UBER TECHNOLOGIES, INC. upon information and belief based upon personal knowledge:

INTRODUCTION

1. Plaintiff’s Class Action Complaint is brought pursuant to the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

1 2. Plaintiff, individually, and on behalf of all others similarly situated,
2 brings this Complaint for damages, injunctive relief, and any other available legal
3 or equitable remedies, resulting from the illegal actions of Defendants debiting
4 Plaintiff's and also the putative Class members' bank accounts on a recurring
5 basis without obtaining a written authorization signed or similarly authenticated
6 for preauthorized electronic fund transfers from Plaintiff's and also the putative
7 Class members' accounts, thereby violating Section 907(a) of the EFTA, 15
8 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
9 Plaintiff alleges as follows upon personal knowledge as to herself and his own
10 acts and experiences, and, as to all other matters, upon information and belief,
11 including investigation conducted by his attorneys.

12 **JURISDICTION AND VENUE**

13 3. This Court has jurisdiction under 28 U.S.C. 1331, because this action
14 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*

15 4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m),
16 which states that, "without regard to the amount in controversy, any action under
17 this section may be brought in any United States district court."

18 5. Venue and personal jurisdiction in this District are proper pursuant to
19 28 U.S.C. 1391(b) because Plaintiff resides within this District and Defendant
20 does or transact business within this District, and a material portion of the events
21 at issue occurred in this District.

22 **PARTIES**

23 6. Plaintiff, Janette Iniguez ("PLAINTIFF"), is a natural person
24 residing in San Mateo County in the state of California, and is a "consumer" as
25 defined by 15 U.S.C. §1693a(6).
26

27 7. At all relevant times herein, DEFENDANT, UBER
28 TECHNOLOGIES, INC. ("DEFENDANT"), was a company engaged in the

1 business of providing transportation services to consumers.

2 8. The above named Defendant, and its subsidiaries and agents, are
3 collectively referred to as “Defendants.” The true names and capacities of the
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
6 names. Each of the Defendants designated herein as a DOE is legally
7 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
8 Court to amend the Complaint to reflect the true names and capacities of the
9 DOE Defendants when such identities become known.

10 9. Plaintiff is informed and believes that at all relevant times, each and
11 every Defendant was acting as an agent and/or employee of each of the other
12 Defendants and was acting within the course and scope of said agency and/or
13 employment with the full knowledge and consent of each of the other
14 Defendants. Plaintiff is informed and believes that each of the acts and/or
15 omissions complained of herein was made known to, and ratified by, each of the
16 other Defendants.

17
18 **FACTUAL ALLEGATIONS - EFTA**

19 10. Beginning in or around April of 2016, Defendants began to deduct
20 funds from Plaintiff’s account multiple times on a reoccurring basis, without
21 Plaintiff’s consent or authorization.

22 11. Plaintiff never provided Defendants with any authorization to deduct
23 these sums of money on a regular recurring basis from Plaintiff’s banking
24 account.

25 12. Defendants continued to deduct these sums from Plaintiff for several
26 months without Plaintiff’s authorization.

27 13. Further, Defendants did not provide to Plaintiff, nor did Plaintiff
28 execute, any written or electronic writing memorializing or authorizing these

1 recurring or automatic payments.

2 14. Plaintiff alleges such activity to be in violation of the Electronic
3 Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”), and its surrounding
4 regulations, including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and
5 1005.9.

6 **CLASS ACTION ALLEGATIONS**

7 15. Plaintiff brings this action on behalf of herself and all others
8 similarly situated, as a member of the proposed class (hereafter “The Class”)
9 defined as follows:

10 All persons in the United States whose bank accounts
11 were debited on a reoccurring basis by Defendants
12 without Defendants obtaining a written authorization
13 signed or similarly authenticated for preauthorized
14 electronic fund transfers within the one year prior to the
filing of this Complaint.

15 16. Plaintiff represents, and is a member of, The Class, consisting of all
16 persons within the United States whose bank account was debited on a recurring
17 basis by Defendants without Defendants obtaining a written authorization signed
18 or similarly authenticated for preauthorized electronic fund transfers within the
19 one year prior to the filing of this Complaint.

20 17. Defendants, their employees and agents are excluded from The
21 Class. Plaintiffs do not know the number of members in The Class, but believe
22 the Class members number in the hundreds, if not more. Thus, this matter should
23 be certified as a Class Action to assist in the expeditious litigation of the matter.

24 18. The Class is so numerous that the individual joinder of all of its
25 members is impractical. While the exact number and identities of The Class
26 members are unknown to Plaintiff at this time and can only be ascertained
27 through appropriate discovery, Plaintiff is informed and believes and thereon
28

1 alleges that The Class includes hundreds, if not thousands, of members. Plaintiff
2 alleges that The Class members may be ascertained by the records maintained by
3 Defendants.

4 19. This suit is properly maintainable as a class action pursuant to Fed.
5 R. Civ. P. 23(a) because the Class is so numerous that joinder of the Class
6 members is impractical and the disposition of their claims in the class action will
7 provide substantial benefits both to the parties and to the Court.

8 20. There are questions of law and fact common to the Class affecting
9 the parties to be represented. The questions of law and fact to the Class
10 predominate over questions which may affect individual Class members and
11 include, but are not necessarily limited to, the following:

12 a. The members of the Class were not provided with, nor did they
13 execute, written agreements memorializing the automatic or recurring electronic
14 payments.

15 b. Defendants did not request, nor did it provide, Class members with
16 written agreements memorializing the automatic or recurring electronic
17 payments.

18 c. The members of the Class did not provide either a written (“wet”) or
19 otherwise electronic signature authorizing the automatic or recurring electronic
20 payments.

21 d. Despite not providing written or electronic authorization for
22 payments to be drawn from their accounts, Defendants took unauthorized
23 payments from Class members’ accounts.

24 21. As someone whose bank account was debited on a reoccurring basis
25 by Defendants without Defendants obtaining a written authorization signed or
26 similarly authenticated for preauthorized electronic fund transfers, Plaintiff is
27 asserting claims that are typical of The Class.
28

1 22. Plaintiff will fairly and adequately protect the interests of the
2 members of The Class. Plaintiff has retained attorneys experienced in the
3 prosecution of class actions.

4 23. A class action is superior to other available methods of fair and
5 efficient adjudication of this controversy, since individual litigation of the claims
6 of all Class members is impracticable. Even if every Class member could afford
7 individual litigation, the court system could not. It would be unduly burdensome
8 to the courts in which individual litigation of numerous issues would proceed.
9 Individualized litigation would also present the potential for varying, inconsistent,
10 or contradictory judgments and would magnify the delay and expense to all
11 parties and to the court system resulting from multiple trials of the same complex
12 factual issues. By contrast, the conduct of this action as a class action presents
13 fewer management difficulties, conserves the resources of the parties and of the
14 court system, and protects the rights of each Class member.

15 24. The prosecution of separate actions by individual Class members
16 would create a risk of adjudications with respect to them that would, as a practical
17 matter, be dispositive of the interests of the other Class members not parties to
18 such adjudications or that would substantially impair or impede the ability of such
19 non-party Class members to protect their interests.

20 25. Defendants have acted or refused to act in respects generally
21 applicable to The Class, thereby making appropriate final and injunctive relief
22 with regard to the members of the Class as a whole.

23 26. Defendants failed to comply with the writing and notice
24 requirements of § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class
25 members with respect to the above alleged transactions.

26 27. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
27 “preauthorized electronic fund transfer from a consumer’s account may be
28

1 authorized by the consumer only in writing, and a copy of such authorization
2 shall be provided to the consumer when made.”

3 28. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
4 term “preauthorized electronic fund transfer” means “an electronic fund transfer
5 authorized in advance to recur at substantially regular intervals.”

6 29. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides
7 that “[p]reauthorized electronic fund transfers from a consumer’s account may be
8 authorized only by a writing signed or similarly authenticated by the consumer.
9 The person that obtains the authorization shall provide a copy to the consumer.”

10 30. Section 205.10(b) of the Federal Reserve Board's Official Staff
11 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
12 authorization process should evidence the consumer’s identity and assent to the
13 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
14 provides that “[a]n authorization is valid if it is readily identifiable as such and
15 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*
16 at ¶10(b), comment 6.

17 31. In multiple instances, Defendants debited bank accounts of the Class
18 members on a recurring basis without obtaining a written authorization signed or
19 similarly authenticated by the respective Class members for preauthorized
20 electronic fund transfers from the accounts of the respective Class members,
21 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
22 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

23 32. In multiple instances, Defendants debited Class members’ bank
24 accounts on a recurring basis without providing a copy of a written authorization
25 signed or similarly authenticated by the respective Class members for
26 preauthorized electronic funds transfers, thereby violating Section 907(a) of the
27 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
28

205.10(b).

33. The size and definition of the Class can be identified through Defendant's records and/or Defendant's agents' records.

COUNT I:
DEFENDANTS VIOLATED THE ELECTRONIC FUNDS TRANSFER
ACT
(On Behalf of Plaintiff and the Class)

34. Plaintiff reincorporates by reference all of the preceding paragraphs.

35. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

36. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term "preauthorized electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at substantially regular intervals."

37. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that "[p]reauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

38. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that "[t]he authorization process should evidence the consumer's identity and assent to the authorization." *Id.* at ¶10(b), comment 5. The Official Staff Commentary further provides that "[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable." *Id.* at ¶10(b), comment 6.

39. In multiple instances, Defendants have debited Plaintiff's and also

the putative Class members' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers from Plaintiff's and also the putative Class members' accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

40. In multiple instances, Defendants have debited Plaintiff's and also the putative Class members' bank accounts on a recurring basis without providing a copy of a written authorization signed or similarly authenticated by Plaintiff or the putative Class members for preauthorized electronic fund transfers, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, JANETTE INIGUEZ, individually, and on behalf of all others similarly situated, respectfully requests judgment be entered against Defendant, UBER TECHNOLOGIES, INC., for the following:

41. That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;

42. Statutory damages of \$1,000.00, per Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);

43. Actual damages;

44. Costs and reasonable attorneys' fees pursuant to the Electronic Fund Transfer Act, §916(a)(3);

45. For prejudgment interest at the legal rate; and

46. Any other relief this Honorable Court deems appropriate.

///

///

///

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 24th day of October, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff